

### **31A-21-104. Insurable interest and consent -- Scope.**

(1) As used in this chapter:

(a) For purposes of this section, "exchange" means an exchange made pursuant to Section 1035, Internal Revenue Code, as may be amended.

(b) "Insurable interest" in a person means the following, including a circumstance described in Subsection (3):

(i) for a person closely related by blood or by law, a substantial interest engendered by love and affection; or

(ii) in the case of a person not described in Subsection (1)(b)(i), a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue.

(c) "Insurable interest" in property or liability means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

(d) "Life settlement" is as defined in Section 31A-36-102.

(2) (a) An insurer may not knowingly provide insurance to a person who does not have or expect to have an insurable interest in the subject of the insurance.

(b) A person may not knowingly procure, directly, by assignment, or otherwise, an interest in the proceeds of an insurance policy unless that person has or expects to have an insurable interest in the subject of the insurance.

(c) In the case of life insurance, the insurable interest requirements of Subsections (2)(a) and (b):

(i) are satisfied if the requirements are met:

(A) at the effective date of the insurance policy; and

(B) at the time of a later procurement, if any, of an interest in the proceeds of an insurance policy; and

(ii) do not need to be met at the time that proceeds of an insurance policy are payable if the requirements are met at the times specified in Subsection (2)(c)(i).

(d) Except as provided in Subsections (7) and (8), insurance provided in violation of this Subsection (2) is subject to Subsection (6).

(e) A policy holder in a group insurance policy does not need an insurable interest if a certificate holder or a person other than the group policyholder who is specified by the certificate holder is the recipient of the proceeds of the group insurance policy.

(3) The following is a nonexhaustive list of insurable interests:

(a) A person has an unlimited insurable interest in that person's own life and health.

(b) A shareholder, member, or partner has an insurable interest in the life of another shareholder, member, or partner for purposes of an insurance contract that is an integral part of a legitimate buy-sell agreement respecting shares, membership interests, or partnership interests in the business.

(c) (i) A trust has an insurable interest in the subject of the insurance to the extent that all beneficiaries of the trust have an insurable interest.

(ii) A trust violates this section if the trust:

(A) is created to give the appearance of an insurable interest, but an insurable interest does not exist; and

(B) is used to initiate a policy for an investor or other person who has no

insurable interest in the insured.

(d) (i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

(A) has an insurable interest in the lives of the employer's:

(I) directors;

(II) officers;

(III) managers;

(IV) nonmanagement employees; and

(V) retired employees; and

(B) may insure a life listed in Subsection (3)(d)(i)(A):

(I) on an individual or group basis; and

(II) with the written consent of the insured.

(ii) (A) A trustee of a trust established by an employer for the sole benefit of the employer has the same insurable interest in the life and health of any person as does the employer.

(B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a trust established by an employer that provides life, health, disability, retirement, or similar benefits to an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the life of the individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.

(iii) (A) For the purpose of exchanging life insurance, an individual described in Subsection (3)(d)(i)(A) includes an individual who was formerly included under Subsection (3)(d)(i)(A) if the life insurance to be exchanged:

(I) is purchased or acquired while the individual is a current director, officer, manager, or employee; and

(II) is exchanged for life insurance in an amount that does not exceed the amount of the insurance being exchanged.

(B) Written consent of an individual described in this Subsection (3)(d)(iii) is not required at the time of the exchange of the life insurance.

(C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with Subsection (2)(c).

(iv) (A) If an employer or trustee establishes an insurable interest as provided in this Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or otherwise transferred to a subsequent employer, the insurable interest of the original employer or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:

(I) the subsequent employer; or

(II) the trustee of a trust established by the subsequent employer for the subsequent employer's sole benefit.

(B) A subsequent employer or a trustee of a trust described in Subsection (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a new insurable interest at the time of the exchange of the insurance.

(v) The extent of an employer's or employer sponsored trust's insurable interest for a nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount commensurate with the employer's unfunded liabilities at the time insurance on

the nonmanagement or retired employee is procured.

(4) (a) Except as provided in Subsection (5), an insurer may not knowingly issue an individual life or accident and health insurance policy to a person other than the one whose life or health is at risk unless that person:

- (i) is 18 years of age or older;
  - (ii) is not under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property; and
  - (iii) gives written consent to the issuance of the policy.
- (b) A person shall express consent:
- (i) by signing an application for the insurance with knowledge of the nature of the document; or
  - (ii) in any other reasonable way.
- (c) Insurance provided in violation of this Subsection (4) is subject to Subsection (6).

(5) (a) A life or accident and health insurance policy may be taken out without consent in a circumstance described in this Subsection (5)(a).

- (i) A person may obtain insurance on a dependent who does not have legal capacity.
- (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an amount reasonably related to the amount of the debt.
- (iii) A person may obtain life and accident and health insurance on an immediate family member who is living with or dependent on the person.
- (iv) A person may obtain an accident and health insurance policy on others that would merely indemnify the policyholder against expenses the person would be legally or morally obligated to pay.
- (v) The commissioner may adopt rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States who is in the public service of the United States, if the policyholder is related within the second degree by blood or by marriage to the person whose life or health is insured.

(b) Consent may be given by another in a circumstance described in this Subsection (5)(b).

(i) A parent, a person having legal custody of a minor, or a guardian of a person under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to the issuance of a policy on a dependent child or on a person under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property.

(ii) A grandparent may consent to the issuance of life or accident and health insurance on a grandchild.

(iii) A court of general jurisdiction may give consent to the issuance of a life or accident and health insurance policy on an ex parte application showing facts the court considers sufficient to justify the issuance of that insurance.

(6) (a) An insurance policy is not invalid because:

- (i) the insurance policy is issued or procured in violation of Subsection (2); or
- (ii) consent has not been given.

(b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:

(i) order the proceeds to be paid to some person who is equitably entitled to the proceeds, other than the one to whom the policy is designated to be payable; or

(ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of the policy other than those relating to insurable interest or consent.

(7) This section does not prevent an organization described under Section 501(c)(3), (e), or (f), Internal Revenue Code, as amended, and the regulations made under this section, and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in life insurance on the life of the donor or assignor or from enforcing payment of proceeds from that interest.

(8) (a) Subsection (8)(b) applies if:

(i) an insurance policy is transferred pursuant to a life settlement in accordance with Chapter 36, Life Settlements Act; and

(ii) before the transfer described in Subsection (8)(a)(i) the insurable interest requirements of Subsection (2)(c)(i) are met for the insurance policy.

(b) An insurance policy described in Subsection (8)(a) is not subject to Subsection (6)(b) and nothing in this section prevents:

(i) an owner of life insurance, whether or not the owner is also the subject of the insurance, from entering into a life settlement;

(ii) a life settlement producer from soliciting a person to enter into a life settlement;

(iii) a person from enforcing payment of proceeds from the interest obtained under a life settlement; or

(iv) the execution:

(A) of any of the following with respect to the death benefit or ownership of any portion of a settled policy as provided for in Section 31A-36-109:

(I) an assignment;

(II) a sale;

(III) a transfer;

(IV) a devise; or

(V) a bequest; and

(B) by any of the following:

(I) a life settlement provider;

(II) a life settlement purchaser;

(III) a financing entity;

(IV) a related provider trust;

(V) a special purpose entity;

(VI) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A; or

(VII) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec. 230.501.

(9) (a) The insurable interests described in this section:

(i) are not exclusive;

(ii) are cumulative of an insurable interest that is not expressly included in this section but exists in common law; and

(iii) are not in lieu of an insurable interest that is not expressly included in this section but exists in common law.

(b) The inclusion of an insurable interest in this section may not be considered to be excluding another insurable interest that is similar to the insurable interest included in this section.

(c) (i) The recognition of an insurable interest in this section by Chapter 89, Laws of Utah 2007, does not imply or create a presumption that the insurable interest did not exist before April 30, 2007.

(ii) An insurable interest shall be presumed with respect to a life insurance policy issued before April 30, 2007 to a person whose insurable interest is recognized in this section by Chapter 89, Laws of Utah 2007.

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